

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Forbearance From	)	WC Docket No. 03-157
The Current Pricing Rules for	)	
The Unbundled Network Element	)	
Platform	)	

**COMMENTS OF  
WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. ("WorldNet" or "Company"), by its undersigned counsel, submits the following comments in response to the Petition for Expedited Forbearance ("Petition") filed by the Verizon telephone companies ("Verizon") on July 1, 2003.<sup>1</sup> Verizon's Petition is yet another in a continuing string of challenges to both the Commission's TELRIC pricing methodology and UNE-P rules. This time, Verizon proposes that the Commission turn UNE-P into resale by another name. WorldNet adamantly opposes this effort.

Seldom have there been rules promulgated by the Commission that have undergone the same level of constant and fruitless attack as have those at issue here. In fact, Verizon filed its Petition even before the Commission's latest effort at revising these rules was made available to the public. Verizon's Petition raises issues that this Commission has only very recently considered and ruled upon, or will soon be the subject of a new proceeding. Because Verizon's Petition does not offer any new facts that warrant the dramatic policy change it advocates, the Commission should summarily reject the Petition.

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<sup>1</sup> *Pleading Cycle Established for Verizon Petition for Expedited Forbearance From The Commission's Current Pricing Rules For The Unbundled Network Element Platform*, WC Docket No. 03-157, Public Notice (rel. July 3, 2003); *see also Petition for Forbearance From the Current Pricing Rules for the Unbundled network element Platform*, WC Docket No. 03-157, Order (rel. July 15, 2003) (extending the comment and reply periods).

Verizon's Petition is little more than a cynical attempt to exhaust its competitor's resources by engaging them in continual regulatory battles. Verizon's constant and unsuccessful attacks on the TELRIC rules serve only to undermine competitors' operations by perpetuating regulatory uncertainty. Ironically, this very regulatory uncertainty is a significant cause of the malaise in the industry for which Verizon now attempts to hold the Commission's UNE-P rules solely responsible.

The TELRIC-based pricing rules that Verizon assails have been upheld by no less an authority than the United States Supreme Court. The competition provided through UNE-P and the choices UNE-P offers to consumers represent one of the few bright spots in the telecommunications industry today. Verizon's Petition is nothing more than an attempt to shield itself from the robust competition that UNE-P carriers provide. Verizon's oft-discredited arguments, if accepted here, will lead to increased prices and decreased competition. The public interest demands that the Commission reject Verizon's Petition.

#### **I. Introduction & Summary**

WorldNet is a provider of local, long distance, and data telecommunications services in Puerto Rico. WorldNet, which is headquartered and operates only in Puerto Rico, currently employs approximately fifty people, and is not affiliated with any other company. WorldNet's goal is to offer its customers in Puerto Rico state of the art telecommunications services with a level of service and quality above and beyond that offered by the incumbent provider in Puerto Rico, which is Puerto Rico Telephone Company, a Verizon affiliate.

Historically, WorldNet has provided its services on a resale basis. However, use of resale is merely an initial step in WorldNet's long-term strategy of constructing its own facilities and becoming a facilities-based provider of bundled services to customers in Puerto Rico. Over the

past four years WorldNet has put in place the organization, systems, processes, and personnel necessary to offer its services through its own facilities. This continuing effort has required a substantial commitment of financial and other resources. WorldNet's current strategy for deploying its own facilities-based network involves migrating its services from resale, to UNEs, and finally to its own facilities. This approach is in keeping with the purpose and express language of the Telecommunications Act of 1996.

WorldNet's current business plan was developed with care over time to ensure that the enterprise is able to grow and develop from a reseller to a facilities based provider. WorldNet is committed to this path and is convinced that its long-term enterprise will be more viable as a facilities-based provider. However, should Verizon's Petition be granted, it will create a significant barrier to WorldNet's efforts to build a facilities-based business. The existence of TELRIC-priced UNE-P is the main reason why consumers in WorldNet's market of Puerto Rico, as well as consumers nationwide, now have a choice of local providers. The Commission should resist Verizon's latest effort to stymie the development of competition and reject this Petition.

## **II. Verizon's Request For Forbearance From The Commission's TELRIC Pricing Rules Is Not Justified**

In its Petition, Verizon requests that the Commission forbear from applying its TELRIC pricing rules to UNE-P.<sup>2</sup> Verizon further requests that the Commission price UNE-P at resale rates established at the state level.<sup>3</sup> In addition, Verizon suggests that the Commission require competitors that utilize UNE-P pay any access charges they collect to the underlying incumbent carrier.<sup>4</sup> In essence, Verizon is requesting that the Commission effectively abolish UNE-P and

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<sup>2</sup> *Petition for Expedited Forbearance of the Verizon Telephone Company* at 4 (filed July 1, 2003) ("*Petition*").

<sup>3</sup> *Petition* at 13 -14.

<sup>4</sup> *Petition* at 15.

replace it with resale. There is no need for the Commission to engage in a lengthy analysis of Verizon's disjointed and often confusing Petition, as the Commission has already addressed and rejected the issues it raises. Rather, the Commission should keep the current rules in place and simply find that these rules remain necessary to ensure that Verizon's rates are just, reasonable and that, therefore, the conditions of Section 10(a) of the Act are not satisfied.

Section 10(a)(1) of the Act requires the Commission to forbear from any rule that, among other things, is not necessary to ensure that charges for telecommunications services are just and reasonable and are not unjustly or unreasonably discriminatory.<sup>5</sup> The Commission has already determined that the TELRIC rules are necessary to ensure that rates for interconnection are "just, reasonable, and nondiscriminatory."<sup>6</sup> In its Petition, Verizon does not raise anything new to counter the Commission's prior finding that its TELRIC pricing methodology is necessary to promote just, reasonable, and nondiscriminatory rates. Specifically, the root of Verizon's Petition is that: 1) the application of TELRIC does not create an incentive for the construction of new facilities;<sup>7</sup> 2) TELRIC does not properly compensate incumbents for use of their facilities;<sup>8</sup> and 3) TELRIC discourages ILEC investment.<sup>9</sup>

In making its initial determination regarding the TELRIC methodology, the Commission specifically addressed, and rejected, each of these very same claims.<sup>10</sup> Further, the FCC also considered and apparently rejected these arguments as they relate to UNE-P in the *Triennial Review Order*, one of the largest and most contentious proceedings of the past several years,

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<sup>5</sup> Codified at 47 U.S.C. § 160(a)(1).

<sup>6</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 ¶¶ 117, 672 (1996) ("*Local Competition Order*").

<sup>7</sup> See *Petition* at 2, 6-7, 9-10, 23.

<sup>8</sup> See *Petition* at 2-3, 12-13, 16, 19-20.

<sup>9</sup> See *Petition* at 11-12, 21.

<sup>10</sup> See *Local Competition Order* at ¶ 638 (ILECs argue that TELRIC will not create incentives for new entrants to build their own facilities); *Id.* at ¶¶ 641 & 686 (ILECs argue that TELRIC will not properly compensate for capital costs and economic depreciation rates); *Id.* at ¶ 658 (TELRIC will discourage ILEC investment in their networks).

which was not even released at the time Verizon filed its Petition.<sup>11</sup> In fact, in the Triennial Review proceeding Verizon specifically requested that the Commission cease applying TELRIC standards to UNEs.<sup>12</sup> There is no reason why the Commission should address this issue once again *before it has even issued a determination in response to this prior request.*

Not only has the Commission already addressed these specific claims, but the courts have also addressed, and rejected, these arguments as well. In *Verizon Communications, Inc. v. Federal Communications Commission*<sup>13</sup> Verizon attacked the legitimacy of the Commission's TELRIC rules by claiming that they will not result in competition but rather "a sort of parasitic free-riding, leaving TELRIC incapable of stimulating the facilities-based competition intended by Congress."<sup>14</sup> The Supreme Court specifically rejected this argument in a strongly worded and insightful review of the TELRIC rate setting mechanism.<sup>15</sup> As the D.C. circuit later observed in *CompTel v. FCC*,<sup>16</sup> the Supreme Court in *Verizon* obviously accepted the view "that Congress preferred facilities-based competition over "parasitic free-riding" but the Court went on to decide that "the FCC could reasonably conclude that TELRIC would not create the perverse incentives the ILECs claimed."<sup>17</sup>

Verizon has not provided any evidence that would warrant any sudden reversal of the TELRIC rules by the Commission now. In its Petition, Verizon has submitted a report to support its position that TELRIC has single-handedly caused the meltdown in the telecommunications

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<sup>11</sup> See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Comments and Contingent Petition for Forbearance of the Verizon Telephone Companies 27-37, 69 (filed April 5, 2002) ("*Verizon Triennial Review Comments*"); see *FCC Adopts New Rules For Network Unbundling Obligations of Incumbent Local Phone Carriers*, Docket No. CC 01-338, Public Notice ¶ 3 (establishing criteria for state public utilities commissions to determine availability of UNE-P, in either event UNE-P to remain available for three years).

<sup>12</sup> *Verizon Triennial Review Comments* at 69.

<sup>13</sup> 122 S.Ct. 1646 (2002) ("*Verizon*").

<sup>14</sup> *Id.* at 1669.

<sup>15</sup> *Id.* at 1666 - 1670.

<sup>16</sup> 309 F.3d 8 (D.C. Cir. 2002).

<sup>17</sup> *Id.* at 16.

industry.<sup>18</sup> This study is far from convincing and reflects more an exercise in hyperbolic rhetoric guided by wishful thinking than a serious attempt to analyze the cause of the on-going downturn in the telecommunications industry.

WorldNet will not address each of the many groundless assertions advanced in Verizon's "report". However, it is instructive to address one central claim that is emblematic of Verizon's efforts in this Petition. Specifically, in its report Verizon claims that a decrease in TELRIC rates "has led to a significant decrease in investment in the telecommunications industry . . ."<sup>19</sup> In effect, Verizon is fingering TELRIC as the sole, root cause of all the structural problems that have caused the decline in the telecommunications industry over the past three years.<sup>20</sup> Yet, despite its enormous potential implications, Verizon provides no support for this extraordinary claim other than a loose correlation in time between the implementation of the Commission's TELRIC rules and the overall decline that the industry has experienced over the past several years.<sup>21</sup>

The downturn in the industry had many causes, among them, overcapacity of networks and obstructionist tactics by incumbent LECs. Widespread availability of UNE-P is not among the causes of the downturn. In fact, one study indicates that ILECs actually invest more in telecommunications facilities where UNE-P competition is the strongest.<sup>22</sup> The consumer choice brought about by the availability of UNE-P offerings is one of the Act's success stories and has only recently begun to take root. Overall, there has been a significant net increase in investment

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<sup>18</sup> See *Petition* at Attachment B 14-15.

<sup>19</sup> *Petition* at Attachment B 13.

<sup>20</sup> See, e.g., *Petition* at 1, 6, Attachment B 14-15 ("As use of UNE-P at TELRIC rates has increased, investment by all telecom carriers, incumbent LECs and competing carriers alike, has declined significantly." "TELRIC and UNE-P rules have so significantly devalued the telecom sector that this level of investment is no longer sustainable.").

<sup>21</sup> *Id.*

<sup>22</sup> See Phoenix Center Policy Bulletin No. 5. (Attached hereto as Attachment A).

and capital stock in the sector since the passage of the Act.<sup>23</sup> This is despite the recent decline in the competitive sector of the industry. Further, the recent decline hit industry segments, such as the wireless industry and the e-commerce industries, which are not directly impacted by the TELRIC rates that Verizon complains about.

In addition, there are a number of other alternative factors that more accurately describe the causes of the decline in spending over the past several years. For example, one much more likely scenario is that any decline in capital investment is a result of the natural, if unpleasant, boom and bust cycle that the telecommunications industry has been experiencing. According to this view, the decline in the industry is the consequence of a prior period of acute over investment by companies seeking first-mover advantages with untried business plans.<sup>24</sup> New entrants tended to take on high amounts of debt in order to obtain the growth capital necessary to build out competitive networks.<sup>25</sup> These companies were then unable to aggregate sufficient customer volume on their networks once constructed, due at least in part to ILECs' such as Verizon resisting the implementation of the Act.<sup>26</sup> This combination of high debt and lower than expected customer volume left competitors unable to service their debt when their networks could not generate the income initially projected.<sup>27</sup> Many of these competitors subsequently went out of business, erasing market capitalization and eliminating their continued capital investment in the process.

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<sup>23</sup> See Phoenix Center Policy Bulletin No. 4. (Attached hereto as Attachment B).

<sup>24</sup> See, e.g., Joelle Tessler, *Former FCC Chief Surveys State of Telecom Industry*, San Jose Mercury News, Nov. 4, 2003 (Quoting former FCC Commissioner William Kennard as stating that "[t]ypically, when you have a boom economy, you get overinvestment and too much capacity, a lot of speculation around business models that have not been fully tested or thought out. And that really explains what happened in the late '90s. What typically follows a boom period is the bust, where the overhang of overcapacity, speculation and overinvestment gets rationalized. And that's the period we're in now.").

<sup>25</sup> See, e.g., *Govt. Should Let Telecom Market Work Itself Out, Experts Say*, Telco Business Report, April 22, 2002.

<sup>26</sup> See Steve Ulfelder, *The DLEC's Demise*, Network World, Jan. 7, 2002, at 34.

<sup>27</sup> See *Powell Asks Senate for More Power to Ensure Continuity of Service*, Communications Daily, July 31, 2002 (FCC Commissioner Powell states before Senate Commerce Committee that "the problems with [sic] telecom industry occurred because demand never materialized to utilize capital invested in building new networks.").

Further, the timing of increased use of UNE-P is as easily explained as a consequence of the timing of Verizon's legal challenge to those rules beginning in 2000,<sup>28</sup> the U.S. Supreme Court finally upholding them in early 2003 in the *Verizon* case, and the ILECs slowly making UNE-P available in a meaningful way only as their avenues for challenging the rules decreased and finally ran out. It is not at all surprising that there would be an increase in UNE-P ordering and provisioning correlating with the time in which the ILECs began implementing their obligations under the Act. Further, the decline in the competitive provider industry was already well underway by this time. Verizon's position that the imposition of TELRIC pricing *caused* the downturn in the telecommunications industry is as unsupportable as it is incredible.

The Commission should not change the TELRIC and UNE combination policies that it has developed, adopted and defended over years of constant effort on the basis of this Petition. The Commission already determined in the *Local Competition Order* that these rules are necessary to ensure just and reasonable rates. Verizon has provided the Commission with no compelling new insights that require a change in this finding here. Further, to the extent that the Commission anticipates reviewing its TELRIC rules in the near future, that proceeding would be the better forum for gathering the factual record necessary to make a policy shift of the magnitude advocated by Verizon in its Petition. The scant material presented by Verizon in this case simply is not robust or credible enough to warrant the relief Verizon seeks.

### **III. Forbearance From The Rule Permitting CLECs To Retain Access Charges Is Unwarranted**

Verizon's primary rationale for requesting forbearance of the Commission's current access charge rules is based on its claim that TELRIC does not provide incumbents recovery of

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<sup>28</sup> See *Verizon* at 727 - 728 (describing the history of challenge to the Commission's TERIC rules).



any real-world measure of their costs.<sup>29</sup> This is nothing more than an extension of its direct attack on TELRIC as it applies to UNE-P. As discussed, the Commission has already determined that the compensation ILECs receive under TELRIC represents full compensation for use of UNEs.<sup>30</sup> The Commission has further specifically ruled that granting ILECs the right to all access charge revenue would represent double compensation to them for use of the facility.<sup>31</sup> In its Petition Verizon has offered no compelling evidence of a need to forbear from this current rule other than the broad statements of harm it has suffered due to the FCC's implementation of TELRIC rules, which it has long opposed.

As with Verizon's request relating to forbearance of the Commission's TELRIC rules, this request does not meet the specific requirements for forbearance set forth in Section 10 of the Act. As an initial matter, as with the TELRIC rules discussed above, forbearance from the access charge rules is not necessary to ensure unjust, unreasonable, discriminatory pricing. The Commission has already specifically determined that TELRIC represents full compensation to the ILEC for use of the network elements and that permitting double collection by ILECs through both UNE charges and access fees unnecessary.<sup>32</sup> Verizon's Petition fails to provide any cause for the Commission to revisit this finding.

In order to grant Verizon's Petition, the Commission will have to reverse its prior ruling in the *Local Competition Order* and abandon its policy relating to TELRIC pricing. The Commission has fought long and hard to implement this TELRIC pricing policy, which the

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<sup>29</sup> *Petition* at 16.

<sup>30</sup> *Local Competition Order* at ¶ 363.

<sup>31</sup> *Local Competition Order* at ¶ 363.

<sup>32</sup> *Local Competition Order* at ¶¶ 721-722.

Supreme Court in *Verizon* has supported as consistent with the will of Congress.<sup>33</sup> Verizon has simply not established, as a factual matter, that this is no longer the case.

Furthermore, Verizon has not established that these rules are no longer necessary to protect consumers as required under Section 10(a)(2) of the Act. The Commission already has rules in place limiting the amounts that CLECs may charge for access.<sup>34</sup> Further, access charges are billed between carriers, end users will be billed in accordance with the IXCs' billing policies regardless of which local provider receives the fee.<sup>35</sup> It is the IXCs that decide whether these charges will be passed along to their end users, and local providers such as WorldNet have no say in this matter. Thus, the rule allowing the UNE-P provider to retain the access charge revenue will have no direct effect upon consumers, but is instead a question of which group of carriers will receive the benefit of access charges. As stated above, the Commission already has held that permitting the ILEC to retain this access charge recovery would result in an impermissible double recovery for the ILECs.

These present rules are crucial for maintaining an environment that permits competitive providers to operate in a competitive and relatively stable regulatory environment. The Commission's purpose in its original access charge reform proceedings was to promote competition by reforming its access charge rules to simplify them, harmonize them with the Commission's other pro-competition rules and remove hidden implicit support mechanisms.<sup>36</sup> The current rules still support these goals and are just one facet of a larger and more complicated process the Commission has undertaken to reform its access charge and universal service

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<sup>33</sup> See *Verizon*, *supra* n. 13.

<sup>34</sup> See 47 C.F.R. § 61.26.

<sup>35</sup> See *Access Charge Reform Price Cap Performance Review For Local Exchange Carriers Low -Volume Long-Distance Users Federal-State Joint Board On Universal Service*, CC Docket Nos. 96-262, 94-1, Report and Order and Eleventh Report and Order, 15 FCC Rcd 12962 ¶ 152 (May 31, 2000).

<sup>36</sup> See *Access Charge Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982 ¶¶ 1-10 (1997).

regimes. Conversely, implementing the changes advocated by Verizon would have the effect of removing UNE-P as a viable mode of competitive entry and thereby significantly reduce competition. This will deny consumers the benefits in the form of lower prices and new services that competition provides. In addition, Verizon has failed to demonstrate that consumers will not be harmed by its proposal. The plain fact of the matter is, however, that consumers will be greatly harmed if TELRIC-based UNE-P were no longer available. For the vast majority of consumers in Puerto Rico, TELRIC-based UNE-P provides the only real alternative to the ILEC's service. If TELRIC-based UNE-P were no longer available, these consumers would, in virtually all cases, have no choice of local providers. Accordingly, the Commission should find that Verizon has not met its burden under Section 10(a)(2) of the Act.

Finally, granting Verizon's petition is not in the public interest as required under Section 10(a)(3). One of the primary goals of the Act is to promote competition in the telecommunications industry. Section 10 of the Act embodies this policy by requiring that the Commission consider whether forbearance will "promote competitive market conditions, including the extent to which such forbearance will promote competition among providers of telecommunications services . . . ." <sup>37</sup> Forbearance here will do nothing to promote competition in the telecommunications market but will have an immediate and significant detrimental impact on competition.

The Commission has promulgated the rules at issue here specifically to implement the pro-competitive aspects of the Act. <sup>38</sup> The Commission has further engaged in extensive legal battles to uphold these rules. <sup>39</sup> Competitors such as WorldNet have relied upon the Act and the

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<sup>37</sup> 47 U.S.C. § 160(b).

<sup>38</sup> See *Local Competition Order* at ¶ 6, 672, 716.

<sup>39</sup> See, e.g., *AT&T v. Iowa Utilities Board*, 119 S.Ct. 721 (1999) (upholding FCC jurisdiction to impose rate-setting methodology); *Verizon v. FCC*, *supra* n. 13 (upholding FCC TELRIC methodology and combination rules).

present rules in crafting rational business strategies and making market entry plans. Indeed, they have expended significant resources to implement these strategies. These plans are premised upon financial and operational assumptions about future revenues, which include access charges. Any abrupt and unexpected changes to the Commission's compensation mechanism, such as those advocated by Verizon in the Petition, will have a significant negative impact on competitors' businesses and will likely lead to significant instability in the competitive telecommunications industry. This clearly will not be a pro-competitive outcome consistent with the public interest standard contained in Section 10(a)(3).

Furthermore, since 1997 the Commission has been engaged in a continuous, comprehensive review of its access charge regime.<sup>40</sup> This multifaceted undertaking has required the coordination of policies relating to both access charges and universal service as the Commission endeavors to craft a coherent and rational system governing both interrelated compensation mechanisms. Any broad change to the current access charge rules must be considered in relation to the rest of the access charge and universal service systems in order to maintain the cohesion and rationality of the entire system. Verizon has provided no indication of how its proposal will jibe with the Commission's overall access charge and universal service reform efforts.

The Commission's overarching approach to access charge reform should not be conducted on an ad hoc basis to suit Verizon's limited goals here -- namely undoing the Commission's UNE-P rules. Accordingly, because this Petition will not promote competition in accordance with the purpose of the Act and will further complicate the Commission's access

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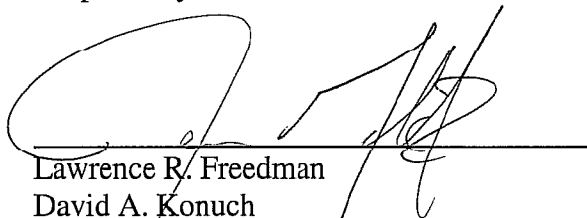
<sup>40</sup> See *Access Charge Reform: Working to Reduce Your Phone Bills and Increase Your Choices*, available at <http://ftp.fcc.gov/cgb/consumerfacts/accesschrg.html>.

charge and universal service reform efforts, WorldNet believes that the Commission should deny Verizon's request in this Petition because it is not in the public interest under Section 10(a)(3).

## **V. Conclusion**

WorldNet respectfully urges the Commission to summarily reject Verizon's Petition as it raises issues that this Commission has specifically considered and sets forth arguments that the Commission has previously rejected. Nor does the Petition offer any credible new facts or analysis that warrant the dramatic policy change it advocates. WorldNet believes that Verizon's Petition is little more than an effort to keep the pressure on the Commission after it's recent failure to obtain the outcome it advocated with regard to UNE-P in the Commission's Triennial Review proceeding. WorldNet urges the Commission to deny Verizon's Petition and allow competitors to get about the work of executing business plans without any further regulatory upheavals.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. Freedman', is written over a horizontal line.

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